

1 By

Mayer

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H.B. No. 1150

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4
5 A BILL TO BE ENTITLED

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7 AN ACT

8
9 relating to the licensing of persons who fit
10 and dispense hearing aids; relating to the
11 creation, organization, powers, duties, and
12 procedures of the Texas Board of Examiners
13 in the Fitting and Dispensing of Hearing Aids;
14 providing for certain prohibited acts; providing
15 for penalties; and declaring an emergency.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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19 Section 1. DEFINITIONS. (a) In this Act, unless the context
20 requires a different definition:

21 (1) "Board" means the Texas Board of Examiners in the
22 Fitting and Dispensing of Hearing Aids.

23 (2) "License" means license issued by the board under this
24 Act to persons authorized to practice fitting and dispensing hear-
25 ing aids.

26 (3) "Temporary license" means a license issued by the board
27 to persons authorized to practice fitting and dispensing hearing
28 aids only under the employ and personal supervision of a person
29 who holds a license under this Act.

30 (4) "Hearing aid" means any instrument or device designed
31 for, or represented as, aiding, improving or correcting defective
32 human hearing, and any parts of such an instrument or device except
33 batteries.

34 (5) "Sell" or "sale" includes a transfer of title or of the
35 right to use by lease, bailment, or any other contract.

36 (b) "The practice of fitting and dispensing hearing aids" is
37 defined as the employment of objective or subjective means, without
38 the use of drugs, for the purpose of ascertaining and measuring the
39 powers and/or range of human hearing, and fitting and adapting of
40 hearing aids to correct or remedy any defect or abnormal condition
41 of hearing and the consequent selection or adaption or sale of
42 hearing aids intended to compensate for hearing loss.

43 (c) For the purpose of this Act, the words, "ascertaining
44 and measuring the powers and/or range of human hearing" as employed
45 in this Act, include:

46 (1) The measuring of human hearing by any means solely for
47 the purpose of making selections, adaptations, or sale of hearing
48 aids.

49 (2) The measuring of human hearing by any means at the
50 request of a duly licensed physician or surgeon.

51 (d) For the purpose of this Act, the words, "the fitting
52 and adapting hearing aids" as employed in this Act, shall include:

53 (1) the making of impressions for earmold to be used as a
54 part of a hearing aid;

1 (2) the adaption or supplying of hearing aids to correct a
2 hearing loss;

3 (3) the making of repairs, corrections, or alterations
4 of hearing aids for compensation.

5 Sec. 2. BOARD OF EXAMINERS. (a) The Texas Board of
6 Examiners in the Fitting and Dispensing of Hearing Aids is hereby
7 created. The board shall be composed of seven members with the
8 following qualifications, to-wit:

9 (1) four of such members shall possess the necessary
10 qualifications to practice fitting and dispensing hearing aids in
11 this state, and have been residents of this state actually engaged
12 in the practice of fitting and dispensing hearing aids for at least
13 five years immediately preceding their appointment and who possess
14 a certificate of proficiency in the fitting and dispensing of
15 hearing aids issued by an association or society of hearing aid
16 fitters and dispensers having branch affiliations in not less
17 than 10 states, and none of the members shall have a financial
18 interest in a hearing aid manufacturing company or a wholesale
19 hearing aid company. No more than two of such four members shall
20 be employed by, franchised by, or associated exclusively with the
21 same hearing aid manufacturer;

22 (2) one of such members shall be a citizen of the United
23 States and a resident of this state for a period of at least two
24 years immediately preceding his appointment and such member shall
25 not have a financial interest in a hearing aid manufacturing
26 company or a wholesale hearing aid company;

27 (3) one of such members shall be a citizen of the United
28 States and a resident of this state for a period of at least two
29 years immediately preceding his appointment; and such member shall
30 be an active practicing physician or surgeon duly licensed to
31 practice in this state by the Texas State Board of Medical
32 Examiners, and who specialize in the practice of otolaryngology,
33 and such member shall not have a financial interest in a hearing
34 aid manufacturing company or a wholesale hearing aid company.

35 (4) one of such members shall be a citizen of the United
36 States and a resident of this state for a period of at least two
37 years immediately preceding his appointment; and such member shall
38 be an active practicing audiologist; and such member shall not
39 have a financial interest in a hearing aid manufacturing company
40 or a wholesale hearing aid company.

41 (b) One who has served two full consecutive terms on the
42 board shall not be eligible for a reappointment to the board for
43 a period of 12 months immediately following the expiration of the
44 second full term.

45 (c) In the event of death, resignation, or removal of any
46 members, the vacancy of the unexpired term shall be filled by the
47 governor in the same manner as other appointments. Each appointee
48 to the board shall, within 15 days from the date of his appoint-
49 ment, qualify by taking the constitutional oath of office. Upon
50 presentation of such oath, the secretary of state shall issue
51 commissions to appointees as evidence of their authority to act
52 as members of the board.

53 (d) The members of the initial board, to be appointed by the
54 governor within 90 days after the effective date of this Act, shall
55 be divided into three classes, to-wit: Class One, Class Two, and

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1 Class Three, and their terms of office shall be determined by lot
2 at the first meeting of the board. The three Class One members
3 shall hold office for two years; and the two Class Two members
4 shall hold office for four years; and the two Class Three members
5 shall hold office for six years, respectively, from the time of
6 their appointment. Biennially thereafter the governor shall
7 appoint two members of the board to hold office for a term of six
8 years, except for the periods when Class One appointments are made
9 when the governor shall appoint three members for six-year terms.

10 (e) The board shall be represented by the attorney general
11 and the district and county attorneys of the state.

12 Sec. 3. BOARD ORGANIZATION AND MEETINGS. Within 60 days
13 after their appointment and qualification the initial board shall
14 hold its first meeting and elect a president, vice president,
15 and secretary-treasurer. The term of office for all officers of
16 the board shall be for a period of one year. The board shall
17 hold regular meetings at least twice a year at which an examination
18 of applicants for license shall be given. Not less than 10 days'
19 notice of such meeting shall be given by publication in at least
20 three daily newspapers of general circulation to be selected by
21 the board. Written notice of such regular meeting of board shall
22 be given to the members by the secretary-treasurer of the board
23 by certified mail not less than 10 days prior to the date of such
24 regular meetings. Special meetings of the board shall be held
25 upon the written request of a majority of the members or upon
26 the call of the president. Written notice of such special meetings
27 of the board shall be given to members by the secretary-treasurer
28 of the board by certified mail not less than 10 days prior to the
29 date of such special meetings. A majority of the board shall
30 constitute a quorum for the transaction of business and should a
31 quorum not be present on the day appointed for any meeting, those
32 present may adjourn from day to day until a quorum be present
33 provided such period shall not be longer than three successive
34 days.

35 Sec. 4. POWERS AND DUTIES OF THE BOARD. (a) The board
36 shall have the power to make such rules and regulations not
37 inconsistent with this Act as may be necessary for the performance
38 of its duties, the regulations of the practice of fitting and
39 dispensing hearing aids, the prescribing of a code of ethics for
40 the practice of fitting and dispensing hearing aids, and the
41 enforcement of this Act.

42 (b) The board shall have the power to appoint committees
43 from its own membership, the duties of which shall be to consider
44 such matters, pertaining to the enforcement of this Act and the
45 rules and regulations promulgated in accordance therewith, as
46 shall be referred to said committees, and they shall make recom-
47 mendations to the board in respect thereto.

48 (c) The board shall have the power to employ the services of
49 stenographers, inspectors, agents, attorneys, and other necessary
50 assistants in carrying out the provisions of this Act.

51 (d) The board, any committee, or any member thereof, shall
52 have the power to issue subpoenas and subpoenas duces tecum to
53 compel the attendance of witnesses and the production of books,
54 records, and documents, to administer oaths and to take testimony

1 concerning all matters within its jurisdiction.

2 (e) The board shall have the right to institute an action
3 in its own name to enjoin the violation of any of the provisions
4 of this Act. Said action for injunction shall be in addition
5 to any other action, proceeding or remedy authorized by law.

6 (f) The board is charged with the duty of aiding in the
7 enforcement of the provisions of this Act, and any member of the
8 board may present to the attorney general or a county or
9 district attorney of this state complaints relating to violations
10 of any provisions of this Act; and the board through the members,
11 officers, counsel, and agents may assist in the trial of any case
12 involving alleged violations of this Act, subject to the control
13 of the attorney general, county attorney, or district attorney
14 charged with the responsibility of prosecuting such case.

15 (g) Before entering upon the discharge of the duties of the
16 office, the secretary-treasurer of the board shall give such bond
17 for the performance of this duty as the board may require, the
18 premium of such bond is to be paid from any available funds.

19 (h) The board shall adopt an official seal and the form of a
20 license of suitable design and shall have an office where all the
21 permanent records shall be kept.

22 Sec. 5. RECORDS. (a) The board shall preserve an accurate
23 record of all meetings and proceedings of the board.

24 (b) A record shall be kept showing the name, age, and
25 present legal and mailing address of each applicant for examination
26 together with such information as the board may desire to record.
27 The record shall also show whether applicants were rejected or
28 licensed and shall be prima facie evidence of all matters therein
29 contained.

30 (c) The secretary-treasurer of the board shall on or before
31 March 1st of each year send a certified copy of such record to the
32 secretary of state for permanent record. A certified copy of said
33 record with the hand and seal of the secretary-treasurer of the
34 board to the secretary of state, shall be admitted as evidence in
35 all courts.

36 (d) The board shall keep a record of each license issued
37 under this Act containing the name, residence, place of business
38 of the person to whom each license has been issued, and the date
39 of issuance of each of such license, and all information
40 pertaining to renewals, revocations, and suspensions of such
41 licensee.

42 Sec. 6. EXAMINATION; APPLICATION. (a) Every person
43 desiring to practice fitting and dispensing hearing aids in the
44 State of Texas shall be required to pass an examination given by
45 the Texas Board of Examiners in the Fitting and Dispensing of
46 Hearing Aids.

47 (b) The applicant shall make application, furnishing to
48 the secretary-treasurer of the board, on forms to be furnished by
49 the board, satisfactory sworn evidence that he has attained the
50 age of 21 years, is of good moral character, is a citizen of the
51 United States, is free of contagious or infectious disease, and
52 has at least graduated from a first-grade high school or has a
53 preliminary education equivalent to permit him to matriculate in
54 The University of Texas, and such other information as the board
55 may deem necessary for the enforcement of this Act.

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1 (c) The examination shall consist of written, oral, or
2 practical tests in the following areas as they pertain to fitting
3 and dispensing hearing aids, to-wit:

- 4 (1) basic physics of sound;
5 (2) the structure and function of hearing aids;
6 (3) the fitting of hearing aids;
7 (4) pure tone audiometry, including air conduction testing
8 and bone conduction testing;
9 (5) live voice and/or record voice speech audiometry;
10 (6) effective masking;
11 (7) recording and evaluation of audiograms and speech
12 audiometry to determine the hearing aid candidacy;
13 (8) selection and adaption of hearing aids and testing of
14 hearing aids;
15 (9) taking of earmold impressions;
16 (10) Such other subjects, areas, and/or skills as may be
17 determined by the board to be essential to a person practicing the
18 fitting and dispensing of hearing aids.

19 (d) No part of the examination shall consist of tests
20 requiring knowledge of the diagnosis and/or treatment of any
21 disease or injury of the human body.

22 (e) Each applicant shall be given due notice of the date and
23 place of the examination and the subjects, areas, and/or skills
24 that will be included within such examination. All examinations
25 shall be conducted in writing and by such other means as the board
26 shall determine adequate to ascertain the qualifications of
27 applicants. All applicants examined at the same time shall be
28 given the same written examination. Every applicant successfully
29 passing the examination and meeting all requirements of the board
30 shall be registered by the board as possessing the qualifications
31 required by this Act and shall receive from the board a license
32 to practice fitting and dispensing hearing aids in this state.

33 Sec. 7. LICENSE WITHOUT EXAMINATION. Within 120 days after
34 the effective date of this Act, and not thereafter, any person
35 engaged in the practice of fitting and dispensing hearing aids on
36 the effective date of this Act shall be registered by the board as
37 passing the qualifications of this Act and shall receive from the
38 board a license to practice fitting and dispensing hearing aids in
39 this state without taking the examination provided for in this Act
40 upon presentation, in writing, by such person to the secretary-
41 treasurer of the board on forms to be furnished by the board,
42 satisfactory sworn evidence that such person has attained the age
43 of 21 years of age, is of good moral character, is a citizen of
44 the United States, is free of contagious or infectious diseases,
45 and has been engaged in the practice of fitting and dispensing
46 hearing aids in this state for a period of at least two years
47 immediately prior to the effective date of this Act.

48 Sec. 8. RECIPROCAL ARRANGEMENTS. (a) The Texas Board of
49 Examiners in Fitting and Dispensing of Hearing Aids may, in the
50 discretion of the board in each instance, grant a license to
51 practice fitting and dispensing of hearing aids without requiring
52 an examination to licentiates of other states or territories having
53 requirements equivalent to or higher than those in effect pursuant
54 to this Act for the practice of fitting and dispensing hearing
55 aids.

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1 (b) Applications for license under the provisions of this
2 section shall be in writing and upon a form prescribed by the
3 board. Such applications shall be filed with the secretary-
4 treasurer of the board. The application shall be accompanied by
5 a license or a certified copy of a license to practice fitting
6 and dispensing of hearing aids, lawfully issued to the applicant
7 by some other state or territory; and shall also be accompanied by
8 an affidavit of the president or secretary of the Board of
9 Examiners in Fitting and Dispensing Hearing Aids who issued the
10 license. The affidavit shall recite that the accompanying
11 certificate or license has not been cancelled or revoked, and that
12 the statement of qualifications made in this application for
13 license in Texas is true and correct.

14 (c) Applicants for a license under the provisions of this
15 section shall subscribe to an oath in writing which shall be a part
16 of said application, stating that the license, certificate, or
17 authority under which the applicant practices fitting and dispens-
18 ing hearing aids in the state or territory from which the applicant
19 removed, was at the time of such removal in full force and not
20 suspended or cancelled; that the applicant is the identical person
21 to whom the said certificate or license was issued, and that no
22 proceeding was pending at the time of such removal, or at the
23 present time pending against the applicant for the cancellation,
24 suspension, or revocation of such certificate or license in the
25 state or territory in which the same was issued and that no
26 prosecution was then or at the time of application, pending against
27 the applicant in any state or federal court for any offense under
28 the laws of Texas which is a felony.

29 Sec. 9. TEMPORARY TRAINING PERMIT. (a) The board shall
30 grant a temporary training permit to practice fitting and dispens-
31 ing hearing aids to any person applying to the board who has never
32 taken the examination provided in the Act and who possesses the
33 qualifications in Subsection (b), Section 6, of this Act, upon
34 written application to the secretary-treasurer of the board. The
35 applicant shall make applications on forms to be furnished by the
36 board furnishing satisfactory sworn evidence that he possesses the
37 qualifications contained in Subsection (b), Section 6, of this Act,
38 that he has never taken the examination provided in the Act, and
39 that he has never previously been issued a temporary training
40 permit to practice fitting and dispensing hearing aids by the
41 board, and such other information that the board determines
42 necessary for the proper enforcement of this Act.

43 (b) The application for a temporary permit shall be accom-
44 panied by the affidavit of a person duly licensed and qualified to
45 practice fitting and dispensing hearing aids in this state. The
46 accompanying affidavit shall state that the applicant, if granted
47 a temporary training permit, will be employed by the affiant,
48 that the affiant will maintain personal supervision of all work
49 done by applicant under such temporary license; that affiant will
50 notify the board within 10 days following applicant's terminating
51 of employment with affiant, and such other information as the
52 board may determine necessary for the proper enforcement of this
53 Act.
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1 (c) A temporary training permit shall authorize the holder
2 thereof, to practice fitting and dispensing hearing aids for a
3 period of 16 months or until the holder thereof shall have success-
4 fully passed the examination required for a license under this Act,
5 whichever event occurs first.

6 (d) A temporary training permit shall never be extended
7 or renewed, and the same shall automatically become void at the end
8 of the period of 16 months from the date of issuance. No person
9 shall ever be issued more than two temporary training permits.

10 Sec. 10. REFUSAL TO LICENSE AND REVOCATION OR SUSPENSION
11 OF LICENSE-GROUNDS. The board may, in its discretion, refuse to
12 issue a license to any applicant and may cancel, revoke, or suspend
13 the operation of any license by its granted powers for any of the
14 following reasons:

15 (1) The applicant or licensee is guilty of gross immorality.

16 (2) The applicant or licensee is unfit or incompetent by
17 reason of negligence.

18 (3) The applicant or licensee is guilty of any fraud,
19 deceit, or misrepresentation in the practice of fitting and dis-
20 pensing hearing aids or in his seeking admission to such practice.

21 (4) The applicant or licensee has been convicted of a felony
22 or a misdemeanor which involved moral turpitude.

23 (5) The applicant or licensee is an habitual drunkard or is
24 addicted to the use of morphine, cocaine, or other drugs having
25 similar effect or had become insane or has been adjudged by a court
26 of competent jurisdiction to be of unsound mind.

27 (6) The applicant or licensee has violated any of the
28 provisions of this Act.

29 (7) The licensee has directly or indirectly employed, hired,
30 procured, or induced a person, not licensed to practice fitting and
31 dispensing hearing aids in this state, to so practice.

32 (8) The licensee directly or indirectly aids or abets in the
33 practice of fitting and dispensing hearing aids any person not duly
34 licensed to practice under this Act.

35 (9) The licensee lends, leases, rents, or in any other
36 manner places his license at the disposal or in the service of any
37 person not licensed to practice fitting and dispensing hearing aids
38 in this state.

39 (10) The licensee used or caused or promoted the use of any
40 advertising matter, promotional literature, guarantees, warranty,
41 label, brand, insignia, or any other representation however dis-
42 seminated or published with misleading, deceiving, improbable, or
43 false information.

44 (11) The licensee advertised a particular model, type, or
45 kind of hearing aid for sale when purchasers or prospective
46 purchasers responding to the advertisement cannot purchase or are
47 dissuaded from purchasing the advertised model, type, or kind when
48 it is established that the purpose of the advertisement is to
49 obtain prospects for the sale of a different model, type, or kind
50 than was advertised.

51 (12) The licensee represented that the service or advice or a
52 person licensed to practice medicine by the Texas State Board of
53 Medical Examiners is used or made available in the selection,
54 fitting, adjustment, maintenance, or repair of hearing aids when
55 such representation was not true.

1 (13) The licensee used the term "doctor," "clinic," or any
2 like words, abbreviations, or symbols in the conduct of his
3 practice which would tend to connote that the licensee was a
4 physician or surgeon.

5 (14) The licensee conducted his business under any name that
6 is connotative of affiliation with or approval by the United States
7 Government, the State of Texas, or any department, agency, or
8 political subdivision thereof.

9 (15) The licensee defamed another licensee under this Act
10 by falsely imputing to him dishonorable conduct, inability to
11 perform contracts, questionable credit standing, or any other
12 false representation or falsely disparaging the products of such
13 other licensee in any respect, or the business methods, selling
14 prices, values, credit terms, policies, or services of such other
15 licensee.

16 (16) The licensee displayed competitive products in his place
17 of business, or in the advertising in such manner as to falsely
18 disparage them.

19 (17) The licensee quoted prices of competitive hearing aids
20 or devices without disclosing that the prices were not the present
21 correct, current prices, or falsely showed, demonstrated, or
22 represented competitive hearing aids models as being the correct,
23 current model of such hearing aids.

24 (18) The licensee imitated or simulated the trademark, trade-
25 name, brand, or label of another licensee under this Act with the
26 intent to mislead or deceive purchasers or prospective purchasers.

27 (19) The licensee used in his advertising the name, model
28 name, or trademark of a particular manufacturer of hearing aids
29 with the intent to falsely imply a relationship with such manu-
30 facturer that does not exist.

31 (20) The licensee used any trade name, corporate name, trade-
32 mark, or other trade designation with the intent to mislead or
33 deceive purchasers or prospective purchasers as to the name,
34 nature, or origin of any hearing aid or part thereof or any
35 material used therein.

36 (21) The licensee obtained or attempted to obtain information
37 concerning the business of another licensee under this Act by
38 bribery, or attempting to bribe an employee or agent of such other
39 licensee, by false or misleading statements or representations or
40 by the impersonation of one in authority.

41 (22) The licensee directly or indirectly gave, or offered to
42 give, or permitted or caused to be given money or anything of value
43 to any person who advises others in a professional capacity as an
44 inducement to influence such person to influence those persons such
45 person advises in a professional capacity to purchase or contract
46 to purchase products sold or offered for sale by licensee or to
47 refrain from purchasing or contracting to purchase products sold
48 or offered for sale by any other licensee under this Act.

49 (23) The licensee represented or advertised that the hearing
50 aid or any parts thereof was guaranteed without a disclosure of the
51 guarantor, the nature and extent of the guarantee, and any
52 conditions or limitations imposed thereon.

53 (24) The licensee falsely represented to a purchaser that a
54 hearing aid was "custom-made," "made to order," "prescription-
55 made," or any other representations that such hearing aid was
56 specially fabricated for the purchaser.

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1 (25) The licensee refused to accept responsibility for the
2 practice of a temporary licensee in a licensee's employ and under
3 licensee's supervision.

4 (26) The licensee actively practiced fitting and dispensing
5 of hearing aids while knowingly suffering from a contagious or
6 infectious disease.

7 (27) The licensee practiced the fitting and dispensing of
8 hearing aids under a false name or alias.

9 (28) The licensee had failed to actively engage in the
10 practice of fitting and dispensing hearing aids for a period of
11 three consecutive years.

12 Sec. 11. PROCEDURE. (a) Proceedings for revocation or
13 suspension of a license shall be commenced by filing charges with
14 the board in writing and under oath. The charges may be made by
15 any person or persons.

16 (b) The president of the board shall fix a time and place
17 for a hearing and shall cause a copy of the charges, together with
18 a notice of the time and place fixed for the hearing, to be served
19 upon the applicant or licensee against whom charges have been filed
20 at least 10 days prior thereto. Service of such charges and notice
21 of hearing thereon may be given by certified mail to the last known
22 address of such licensee or applicant.

23 (c) At the hearing, such applicant or licensee shall have
24 the right to appear either personally or by counsel or both, to
25 produce witnesses, and to have subpoenas issued by the board.

26 (d) The board shall not be bound by strict rules of
27 procedure or by the laws of evidence in the conduct of its
28 proceedings, but the determination shall be founded upon sufficient
29 legal evidence to sustain it.

30 (e) The board shall determine the charges upon their merits.
31 The board shall enter an order in the permanent records of the
32 board setting forth the finding of the board and its action
33 thereon. A copy of such order of the board shall be mailed to such
34 applicant or licensee to his last known address by certified mail.

35 (f) Any person whose license to practice the fitting and
36 dispensing of hearing aids has been refused or has been cancelled,
37 revoked, or suspended by the board, may, within 20 days after
38 making and entering of such order, take an appeal to any district
39 court of Travis County or any district court of the county of his
40 residence, but the decision of the board shall not be stayed or
41 enjoined except upon application to such district court after
42 notice to the board.

43 (g) A case reviewed under the provisions of this section
44 proceeds in such district court by trial de novo as that term is
45 used and understood in appeals from justice of the peace courts to
46 the county courts of this state. Appeal from the judgment of
47 such district court will lie as in other civil cases.

48 (h) Upon application, the board may reissue a license to
49 practice the fitting and dispensing of hearing aids to a person
50 whose license has been cancelled or revoked but such application
51 shall not be made prior to the expiration of a period of six months
52 after the order of cancellation or revocation shall become final,
53 and such application shall be made in such manner and form as the
54 board may require.

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1 Sec. 12. FEES AND EXPENSES. (a) The board shall charge a
2 fee of \$50 for examining an applicant for a license, which fee
3 must accompany the application. If an applicant who, because of
4 failure to pass the examination, be refused a license, he shall
5 be allowed to take the second examination within one year upon the
6 payment of a fee of \$50.

7 (b) The board shall charge a fee of \$25 for issuing a tempo-
8 rary training permit, which fee must accompany the application for
9 a temporary license.

10 (c) The board shall charge a fee of \$100 for issuing a
11 license.

12 (1) Any person making application for a license without an
13 examination as provided in Sections 7 and 8 must submit such fee
14 with such application.

15 (2) Every person passing the examination and meeting the
16 requirements of the board shall be notified that he is eligible for
17 such license upon payments of the fee herein provided. Such notice
18 shall be by certified mail at the address given on his examination
19 papers. The fee for issuance of such license must be paid by the
20 applicant within 90 days after having been notified. Failure to
21 pay such fee within such time shall constitute a waiver of the
22 right of such person to obtain his license.

23 (d) The board shall charge a fee of \$5 for each duplicate
24 license or temporary training permit issued.

25 (e) The secretary-treasurer of the board shall, on or before
26 the 10th day of each month, remit to the state treasurer all of the
27 fees collected by the board during the preceding month for deposit
28 in the general fund.

29 (f) The compensation and travel expenses allowance for
30 members of the board and its employees shall be provided in the
31 General Appropriations Act.

32 (g) The number of days for which compensation may be paid to
33 members of the board shall not exceed two days in any calendar
34 month except in those months in which examinations are held, but
35 compensations may never be allowed to exceed six days in those
36 months in which examinations are held.

37 (h) The board may make all necessary disbursements to carry
38 out the provisions of this Act, including payment of the premium
39 on the bond of the secretary-treasurer, stationery expenses,
40 purchase and maintain or rent equipment and facilities necessary
41 to carry out the examinations of applicants for license; pay for
42 printing of all licenses; rent and furnish an office to maintain
43 the permanent records of the board.

44 (i) After the Act has been effective for a period of two
45 years, the total appropriations to the board shall never exceed
46 the total amount received for all fees collected for the two-year
47 period immediately prior to such appropriation.

48 Sec. 13. RENEWAL OF LICENSE. (a) On or before the first
49 day of January of each year, every licensee under this Act shall
50 pay to the secretary-treasurer of the board an annual renewal fee
51 of \$100 for the renewal of his license to practice fitting and
52 dispensing hearing aids for the current year. On receipt of said
53 renewal fee, the board shall issue an annual renewal certificate
54 bearing the number of his license, the year for which it is

1 renewed, and such other information from the records of the board
2 as the board may deem necessary for the proper enforcement of this
3 Act.

4 (b) When a licensee shall fail to pay his annual renewal
5 fee by February 1st of each year, it shall be the duty of the board
6 to notify such licensee by certified mail at his last known address
7 that said annual renewal fee is due and unpaid. If the annual
8 renewal fee is not paid within 60 days from the said date of
9 mailing such notice, the board shall then cancel said license.

10 (c) Practicing, fitting, and dispensing hearing aids without
11 an annual renewal certificate for the current year as provided
12 herein, shall have the same force and effect and be subject to the
13 same penalties and practicing without a license.

14 (d) After the board has cancelled a license for nonpayment
15 of the annual renewal fee, the board may refuse to issue a new
16 license until such fitter and dispenser of hearing aids has passed
17 the regular examination for license as provided for by this Act.

18 (e) The board shall issue a duplicate license to any licensee
19 whose license has been lost or destroyed and the board shall have
20 the authority to prescribe the procedure and requirements for
21 the issuance of a duplicate license.

22 Sec. 14. DUTY OF LICENSEE. (a) Every person practicing the
23 fitting and dispensing of hearing aids in the state shall display
24 his license in a conspicuous place in his principal office when
25 he practices, and whenever required, exhibit such license to the
26 board or its authorized representative.

27 (b) Every licensee shall deliver to each person supplied
28 with a hearing aid, by the licensee or under his direction, a bill
29 of sale which shall contain his signature, his printed name, the
30 address of his principal office where he practices, the number of
31 his license, a description of the make and model of the hearing
32 aid furnished, the amount charged therefor, and whether the hearing
33 aid is new, used or rebuilt.

34 (c) Such receipt as required in Subsection (b) of this
35 section shall include the following statement in no smaller type
36 than the largest type used in the body portion of such receipt,
37 to-wit:

38 "The purchaser has been advised at the outset of his relation-
39 ship with the undersigned fitter and dispenser of hearing aids,
40 that any examination or representation made by a licensed fitter
41 and dispenser of hearing aids in connection with the fitting and
42 selling of this hearing aid is not an examination, diagnosis or
43 prescription by a person duly licensed and qualified as a physician
44 or surgeon authorized to practice medicine in the State of Texas
45 and, therefore, must not be regarded as medical opinion or advice."

46 (d) Every licensee must, when dealing with a child 10 years
47 of age or under, ascertain whether the child has been examined by
48 an otolaryngologist for his recommendation within 90 days prior to
49 the fitting. If such is not the case, a recommendation by the
50 licensee to do so must be made and this fact noted on the bill of
51 sale required in Subsection (b) of this section.

52 Sec. 15. PROHIBITED ACTS. (a) It is unlawful for any
53 person to:

54 (1) Buy, sell, or fraudulently obtain a license to practice
55 fitting and dispensing hearing aids or aid or abet therein;

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1 (2) Alter a license to practice fitting and dispensing
2 hearing aids with the intent to defraud;

3 (3) Willfully make a false statement in an application to
4 the Texas Board of Examiners of Fitters and Dispensers of Hearing
5 Aids for a license, a temporary license, or for the renewal of a
6 license;

7 (4) Falsely impersonate any person duly licensed as a fitter
8 and dispenser of hearing aids under the provisions of this Act;

9 (5) Practice, offer, or hold himself out as authorized to
10 practice fitting and dispensing hearing aids or use in connection
11 with his name, any designation tending to imply that he is a
12 practitioner of fitting and dispensing hearing aids if not licensed
13 to practice under the provisions of this Act; or

14 (6) Practice fitting and dispensing hearing aids during the
15 time his license shall be cancelled, suspended, or revoked.

16 (b) It is unlawful for any persons not licensed fitters and
17 dispensers of hearing aids or a licensed physician or surgeon to
18 do any one act or thing or any combination of acts or things named
19 or described in Subsections (c) or (d) of Section 1 of this Act.

20 Sec. 16. PENALTY. Whoever violates any provision of this
21 Act shall be fined not less than \$100 nor more than \$500 or be
22 confined in jail for a period of not more than 90 days, or both.
23 Each day of said violation shall be a separate offense.

24 Sec. 17. TREATMENT OF EAR DEFECTS AND ADMINISTERING DRUGS.
25 Nothing contained in this Act shall be construed to permit persons
26 licensed under this Act to treat the ear for any defect whatsoever
27 in any manner, nor to administer any drug or physical treatment
28 whatsoever unless the licensee is a duly qualified physician and
29 surgeon and licensed to practice by the Texas State Board of
30 Medical Examiners.

31 Sec. 18. EMPLOYMENT OF LICENSEES. (a) Nothing in this Act
32 shall prohibit a corporation, partnership, trust, association, or
33 other like organization maintaining an established business in this
34 state of selling or offering for sale hearing aids at retail with-
35 out a license, provided that it employs only persons licensed under
36 this Act in the direct sale or fitting of such products.

37 (b) Any person licensed under this Act who is employed by
38 a corporation, partnership, trust, association, or other like
39 organization to sell and/or fit hearing aids shall supply the
40 board with the name and address of such employer at the time such
41 licensee applies for an annual renewal of his license.

42 Sec. 19. EXCEPTIONS. Nothing in this Act shall be construed
43 to apply to the following:

44 (1) Persons engaged in the practice of measuring human hear-
45 ing as a part of the academic curriculum of an accredited insti-
46 tution of higher learning.

47 (2) Persons engaged in the practice of measuring human hear-
48 ing as a part of a program conducted by a nonprofit organization,
49 provided such organization nor its employees does not sell hearing
50 aids.

51 (3) Physicians and surgeons duly licensed by the Texas State
52 Board of Medical Examiners and qualified to practice in the State
53 of Texas.

54 (4) Persons employed and directly supervised by a physician
55 and surgeon to test or measure human hearing, provided such persons
56 do not sell hearing aids.

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1 Sec. 20. EXCEPTION FROM BASIC SCIENCE LAW. The provisions
2 of Chapter 95, Acts of the 51st Legislature, Regular Session, 1949,
3 as amended, commonly referred to as the Basic Science Law, do not
4 apply to fitters and dispensers of hearing aids duly qualified and
5 licensed under this Act who confine their practice to the fitting
6 and dispensing of hearing aids.

7 Sec. 21. EMERGENCY. The importance of this legislation and
8 the crowded condition of the calendars in both houses create an
9 emergency and an imperative public necessity that the Constitu-
10 tional Rule requiring bills to be read on three several days in
11 each house be suspended, and this Rule is hereby suspended, and
12 that this Act take effect and be in force from and after its
13 passage, and it is so enacted.
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H.B. No. 1156 BY Meyer

A BILL TO BE ENTITLED

AN ACT

relating to the licensing of persons who fit and dispense hearing aids; relating to the creation, organization, powers, duties, and procedures of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids; providing for certain prohibited acts; providing for penalties; and declaring an emergency.

FILED MAR 14 1969

READ 1st TIME
AND REFERRED TO COMMITTEE ON
Legislative Affairs
Efficiency
Dorothy Hallman
MAR 20 1969
Chief Clerk, House of Representatives